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April 22, 1999

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
APR 22 3 03 PM '99

VIA HAND DELIVERY

Kamau Philbert, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MURs 4322 and 4650

Dear Mr. Philbert:

In light of our conversation on Tuesday, we believe it is necessary to clarify our understanding of the limitations, if any, that the Federal Election Campaign Act places on our clients' ability to discuss the final conciliation agreement in these matters. We have reviewed the two relevant provisions, 2 U.S.C. §§ 437g(a)(4)(B) & (a)(12), and do not believe that either of these provisions prevent our clients from making public statements about the terms of the final conciliation agreement as it applies to them individually.

As you know, 2 U.S.C. § 437g(a)(4)(B) prohibits any person from making public, without the written consent of the respondents and the Commission, any information derived from the conciliation process. This provision is intended to protect information exchanged between respondents and the Commission during settlement negotiations. Accordingly, it would prevent either the respondents or the Commission from disclosing *proposed* revisions to the language of the conciliation agreement discussed during the conciliation process. Nothing in section 437g(a)(4)(B), however, prevents either the respondents or the Commission from commenting on the terms of the *final* conciliation agreement once it has been accepted by all parties.

Similarly, 2 U.S.C. § 437g(a)(12) prohibits the disclosure of an ongoing investigation without the written consent of the person with respect to whom such investigation is made. This provision is designed to protect the person under investigation. Since this right belongs to the respondent, it may be waived by the respondent at anytime. Moreover, section 437g(a)(12) applies only to ongoing investigations. Once an investigation has been concluded and a conciliation agreement has been reached, nothing in section 437g(a)(12) prevents respondents from commenting on the terms of the conciliation agreement that apply to them individually.

Kamau Philbert, Esq.

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Section 437g(a)(12) would, however, prevent either the respondents or the Commission from commenting on the existence of an ongoing investigation of *any other respondent* who was not a party to the conciliation agreement.

Accordingly, we trust that you will agree that nothing in the Act prevents our clients from discussing the terms of the final conciliation agreement, as it applies to them individually, once all parties have accepted the agreement.

Sincerely,



Charles H. Roistacher



Brett G. Kappel

For Powell, Goldstein, Frazer & Murphy LLP
Counsel to D. Forrest Greene, Enid Greene, Enid '94 and Enid '96

cc: Lawrence Noble, Esq.
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